

April 19, 1999

Re: Request for Letter Ruling
Real Property Transfer Tax
FLR#: 994740-021
Block Lot ; Block Lot
; Block Lot

Dear :

This letter is in response to your request, dated for a ruling regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the transactions described below.

FACTS

The facts presented are as follows:

, (the "Taxpayer") is a savings bank organized under the laws of the United States. The Taxpayer is mutually owned and has no stockholders. The Taxpayer has record title to and has 100 percent beneficial ownership of () parcels of real property located in New York City and having addresses at , and . All of the properties were purchased directly by the Taxpayer with its own funds and are used as branches of the Taxpayer. The book value of each of the properties exceeds \$25,000 and, although the Taxpayer does not have current appraisals, the Taxpayer believes that the fair market value of each of the properties also exceeds \$25,000. The properties are not encumbered by any mortgages or security interests.

The Taxpayer now desires to convey its ownership interest in the properties to a limited liability company. To this end, the Taxpayer will form a new limited liability company and the Taxpayer will own 100 percent of the membership interests in, and will be the sole and managing member of the limited liability company.

Upon the formation of the limited liability company, the

Taxpayer will convey its interest in each of the properties to the limited liability company by a separate bargain and sale deed without covenants against grantor's act. After the conveyance, the Taxpayer, as owner of 100 percent of the membership interests in the limited liability company, will retain 100 percent beneficial ownership interest of the properties.

ISSUE

You have requested a ruling as to whether the conveyance of these properties and the distributions of interests will be exempt from the RPTT under section 11-2101.8 of the Administrative Code of the City of New York (the "Code") as a mere change in the identity or form of ownership or organization.

CONCLUSION

Based on the facts presented and the representations submitted, we have determined that the conveyances are exempt under Code section 11-2101.8 as a mere change of identity or form of ownership or organization.

DISCUSSION

Code Section 11-2102.b imposes a tax on the transfer of an interest in real property or a controlling economic interest in real property when the consideration exceeds \$25,000.

Generally, a transaction conveying or transferring real property or a controlling economic interest therein that effects a mere change of identity or form of ownership or organization is exempt from the RPTT to the extent the beneficial ownership of the real property or economic interest remains the same as before the transaction. Code § 11-2106. b. 8.

The transfer of each parcel to an LLC formed for the purpose of holding the property in exchange for interests in the LLC will be a transaction subject to the RPTT. However, the transfers of the parcels to the LLC in which the Taxpayer retains 100 percent of the beneficial ownership interest of the properties will be exempt under Code section 11-2106. b (8) as a mere change in form.

The Department of Finance reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs